

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

NAVY SEALs 1-26, et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States, et al.,

Defendants.

Case No. 4:21-cv-01236-O

**DEFENDANTS' NOTICE OF SUPPLEMENTAL FACTUAL DEVELOPMENTS
RELATED TO THEIR PENDING MOTIONS TO COMPEL**

Defendants respectfully provide notice that Plaintiff SWCC 3, who has refused to respond to any of Defendants' discovery requests on the basis that he is not serving as a class representative, continues to submit new declarations and documents in the Court of Appeals in support of the individual and class-wide preliminary injunctions. Dec. 5, 2022 Rule 28(j) Ltr. H. Hacker to Fifth Cir. (attached as Exhibit 1). This factual development is relevant to Defendants' two pending motions to compel, which (among other things) seek to compel discovery responses from Plaintiffs who refuse to comply with their discovery obligations on the basis that they are not class representatives. *See* ECF Nos. 191 & 203. Defendants explained that they are entitled to discovery from all named Plaintiffs, even those who are not class representatives, because "[a]ll individual Plaintiffs sought *and received* relief from this Court on their own behalf, relying on their own sworn declarations." ECF No. 192, at 5. These Plaintiffs "provided declarations in support of the preliminary injunctions currently on appeal" including both the injunction covering individuals and the class-wide injunction. *Id.* And now Plaintiffs are submitting new declarations directly to the Fifth Circuit in support of their individual and class-wide injunctions. *See* Ex. 1.

The non-class-representative Plaintiffs continue to object to Defendants' discovery requests, arguing that they, "like the other absent class members, [are] 'not required to do anything. [They] may sit back and allow the litigation to run its course, content in knowing that there are safeguards provided for [their] protection.'" ECF No. 198 (citation omitted). But non-representative Plaintiffs have not sat back and allowed the litigation to run its course. They continue to actively engage in this litigation by submitting "new" facts in support of their litigation positions, even as recently as two days ago.

Plaintiffs cannot have it both ways. Plaintiffs cannot continue to submit one-sided declarations when it supports their litigation aims but then refuse to provide information sought by Defendants pursuant to proper discovery requests.¹ Named Plaintiffs like SWCC 3 are actively litigating these cases as full parties, and as such, they are required to comply with their discovery obligations under Rule 26.

The letter and supplemental facts submitted to the Court of Appeals underscores why the Court should grant Defendants' pending motions to compel. Defendants are entitled to reasonable discovery from all non-class-representative Plaintiffs under the Federal Rules of Civil Procedure, the applicable case law, and basic principles of fairness.

Dated: December 7, 2022

Respectfully submitted,

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Principle Deputy Assistant Attorney General

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ANTHONY J. COPPOLINO
Deputy Director

¹ The requests are relevant and proportionate to the needs of the case as described in Defendants' papers in support of the pending motions. *See* ECF Nos. 192, 199, 204, and 209

/s/ Zachary A. Avallone

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2022, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Zachary A. Avallone

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